

AMENDED IN SENATE APRIL 15, 2013

**SENATE BILL**

**No. 496**

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**Introduced by Senator Wright**

February 21, 2013

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An act to amend Section 19683 of the Government Code, relating to whistleblower protection.

LEGISLATIVE COUNSEL'S DIGEST

SB 496, as amended, Wright. California Whistleblower Protection Act: administrative procedure.

Existing law, the California Whistleblower Protection Act, provides that a person making a protected disclosure, as defined, about an improper governmental activity is to be free of intimidation or threat and that a person who intentionally engages in acts of reprisal, retaliation, coercion, or similar acts against a state employee or an applicant for state employment for having made a protected disclosure is subject to civil liability and criminal penalties. Existing law also provides that civil damages are available to an injured party only if the State Personnel Board has issued, or failed to issue, findings pursuant to specified procedures. Existing law requires the State Personnel Board to initiate a hearing or investigation of a complaint of reprisal or retaliation in violation of the California Whistleblower Protection Act within 10 working days. Existing law also requires the executive officer of the board to complete findings of the hearing or investigation within 60 working days, but if the allegations contained in the complaint of reprisal or retaliation are the same or similar to those contained in another appeal, the executive officer may consolidate the appeals, in which case the time limits do not apply.

*This bill would instead require a preliminary hearing or investigation to occur within 10 days of submission of a complaint, followed by an evidentiary hearing, as specified. The bill would provide that, if the State Personnel Board issues a decision on consolidated cases following after an evidentiary hearing, an aggrieved party to the decision may file a petition for writ of mandate for review of the decision, as specified. The bill would further provide that, after the executive officer of the board issues the findings of the hearing or investigation, or if the findings of the hearing or investigation are not completed within 60 working days of the submission of the complaint, the complainant is deemed to have exhausted his or her administrative remedies and may file an action for civil damages 70 days after submitting the complaint to the board or sooner if the executive officer issues findings or refers a consolidated appeal to an evidentiary hearing, as specified. The bill would provide that the executive officer's findings of the preliminary hearing or investigation are not binding in a subsequent State Personnel Board evidentiary hearing or in a civil action for damages. The bill would specify that the filing of a civil action by a complainant does not preclude the request for an evidentiary hearing by a supervisor, manager, employee, or appointing power whom the executive office has found to have retaliated against the complainant nor does the request for an evidentiary hearing preclude the complainant's right to file an independent civil action, as specified. The bill would also make other technical changes.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 19683 of the Government Code is  
2 amended to read:  
3 19683. (a) The State Personnel Board shall initiate a  
4 preliminary hearing or investigation of a written complaint of  
5 reprisal or retaliation as prohibited by Section 8547.3 within 10  
6 working days of its submission. The executive officer shall  
7 complete findings of the preliminary hearing or investigation  
8 within 60 working days thereafter, and shall provide a copy of the  
9 findings to the complaining state employee or applicant for state  
10 employment and to the appropriate supervisor, manager, employee,  
11 or appointing authority.

~~(b) If the allegations contained in a complaint of reprisal or retaliation are the same as, or similar to, those contained in another appeal, the executive officer may consolidate the appeals into the most appropriate format. In these cases, the time limits described in subdivision (a) shall not apply. If the State Personnel Board issues a decision on the consolidated cases following an evidentiary hearing, any aggrieved party to the decision may file with the superior court a petition for writ of mandate for review of the decision pursuant to Section 1094.5 of the Code of Civil Procedure.~~

~~(c) After the executive officer issues the findings of the hearing or investigation, as set forth in subdivision (a), the~~

~~(b) The complainant is deemed to have exhausted his or her administrative remedies and may file an independent action for civil damages, consistent with pursuant to Section 8547.8. If the findings of the hearing or investigation are not completed within 60 working days of the submission of the complaint, the complainant is deemed to have exhausted his or her administrative remedies and may file a civil action for damages, consistent with Section 8547.8. 8547.8, 70 working days after submitting the complaint to the State Personnel Board, or sooner upon either of the following:~~

~~(d) The executive officer's findings of the hearing or investigation, as set forth in subdivision (a), are neither binding in a subsequent State Personnel Board evidentiary hearing, as described in subdivision (c), nor in a civil action for damages.~~

~~(1) The executive officer issues the findings of the preliminary hearing or investigation, as set forth in subdivision (a).~~

~~(2) The executive officer consolidates the complainant's multiple appeals pursuant to subdivision (c) and refers the consolidated appeal directly to an evidentiary hearing.~~

~~(e) If~~

~~(c) If, after the preliminary hearing, the executive officer finds that the supervisor, manager, employee, or appointing power retaliated against the complainant for engaging in protected whistleblower activities, the supervisor, manager, employee, or appointing power may request an evidentiary hearing before the State Personnel Board regarding the findings of the executive officer. A complainant's filing of a civil action does not preclude the request for an evidentiary hearing by the supervisor, manager, employee, or appointing power under this subdivision, nor does~~

1 *the request for hearing preclude the complainant's right to file an*  
2 *independent civil action pursuant to subdivision (b). The request*  
3 *for hearing and any subsequent determination by the board shall*  
4 *be made in accordance with the board's normal rules governing*  
5 *appeals, hearings, investigations, and disciplinary proceedings.*

6 *(d) The executive officer's findings of the preliminary hearing*  
7 *or investigation, as set forth in subdivision (a), are not binding in*  
8 *a subsequent State Personnel Board evidentiary hearing requested*  
9 *by the complainant or pursuant to subdivision (c) or (e), nor in a*  
10 *civil action for damages, pursuant to subdivision (b).*

11 *(e) If the allegations contained in a complaint of reprisal or*  
12 *retaliation are the same as, or similar to, those contained in*  
13 *another appeal to the State Personnel Board by the complainant*  
14 *as authorized by another law or under a separate cause of action,*  
15 *the executive officer may consolidate the appeals into the most*  
16 *appropriate format. In these cases, the time limits described in*  
17 *subdivision (a) shall not apply.*

18 *(f) After an evidentiary hearing requested by the complainant*  
19 *or pursuant to subdivision (c) or (e) the State Personnel Board*  
20 *shall issue a decision. Any aggrieved party to the decision may*  
21 *file a petition for writ of mandate with the superior court for review*  
22 *of the decision pursuant to Section 1094.5 of the Code of Civil*  
23 *Procedure. This subdivision shall not apply to a claimant's right*  
24 *to pursue an independent action for civil damages pursuant to*  
25 *subdivision (b).*

26 ~~(f)~~

27 *(g) If, after the evidentiary hearing, the State Personnel Board*  
28 *determines that a violation of Section 8547.3 occurred, or if no*  
29 *evidentiary hearing is requested and the findings of the executive*  
30 *officer conclude that the complainant was retaliated against, the*  
31 *board may order any appropriate relief, including, but not limited*  
32 *to, reinstatement, backpay, restoration of lost service credit,*  
33 *compensatory damages, and the expungement of any adverse*  
34 *records of the state employee or applicant for state employment*  
35 *who was the subject of the alleged acts of misconduct prohibited*  
36 *by Section 8547.3.*

37 ~~(g)~~

38 *(h) Whenever the board determines that a manager, supervisor,*  
39 *or employee, who is named a party to the retaliation complaint,*  
40 *has violated Section 8547.3 and that violation constitutes legal*

1 cause for discipline under one or more subdivisions of Section  
2 19572, it shall impose a just and proper penalty and cause an entry  
3 to that effect to be made in the manager's, supervisor's, or  
4 employee's official personnel records.

5 ~~(h)~~

6 (i) Whenever the board determines that a manager, supervisor,  
7 or employee, who is not named a party to the retaliation complaint,  
8 may have engaged in or participated in any act prohibited by  
9 Section 8547.3, the board shall notify the manager's, supervisor's,  
10 or employee's appointing power of that fact in writing. Within 60  
11 days after receiving the notification, the appointing power shall  
12 either serve a notice of adverse action on the manager, supervisor,  
13 or employee, or set forth in writing its reasons for not taking  
14 adverse action against the manager, supervisor, or employee. The  
15 appointing power shall file a copy of the notice of adverse action  
16 with the board in accordance with Section 19574. If the appointing  
17 power declines to take adverse action against the manager,  
18 supervisor, or employee, it shall submit its written reasons for not  
19 doing so to the board, which may take adverse action against the  
20 manager, supervisor, or employee as provided in Section 19583.5.  
21 A manager, supervisor, or employee who is served with a notice  
22 of adverse action pursuant to this section may file an appeal with  
23 the board in accordance with Section 19575.

24 ~~(i)~~

25 (j) In order for the Governor and the Legislature to determine  
26 the need to continue or modify state personnel procedures as they  
27 relate to the investigations of reprisals or retaliation for the  
28 disclosure of information by public employees, the State Personnel  
29 Board, by June 30 of each year, shall submit a report to the  
30 Governor and the Legislature regarding complaints filed, hearings  
31 held, and legal actions taken pursuant to this section.